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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

15
16 ERIC WILLIAMS,

17 Plaintiff,

18 vs.

19 BOSTON SCIENTIFIC CORPORATION,
JAMES TOBIN, WILLIAM R.
20 ROSKOPF, JENNIFER A. HEGNER
AND THOMAS J. O'CONNELL, JR.

21 Defendants.

22 Case No. 3:08-CV-01437-WHA

23 STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
 5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 7 all disclosures or responses to discovery and that the protection it affords extends only to the
 8 limited information or items that are entitled under the applicable legal principles to treatment as
 9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
 10 Stipulated Protective Order creates no entitlement to file confidential information under seal;
 11 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
 12 that will be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: any party to this action, including all of its officers, directors,
 15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information,
 17 regardless of the medium or manner generated, stored, or maintained (including, among
 18 other things, testimony, transcripts, or tangible things) that are produced or generated in
 19 disclosures or responses to discovery in this matter.

20 2.3 “Confidential” Information or Items: information (regardless of
 21 how generated, stored or maintained) or tangible things that qualify for protection under
 22 standards developed under F.R.Civ.P. 26(c).

23 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or
 24 Items: extremely sensitive “Confidential Information or Items” whose disclosure to
 25 another Party or nonparty would create a substantial risk of serious injury that could not
 26 be avoided by less restrictive means.

27 2.5 Receiving Party: a Party that receives Disclosure or Discovery
 28 Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

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1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
 3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 4 otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for
 7 Protection. Each Party or non-party that designates information or items for protection
 8 under this Order must take care to limit any such designation to specific material that
 9 qualifies under the appropriate standards. A Designating Party must take care to designate
 10 for protection only those parts of material, documents, items, or oral or written
 11 communications that qualify – so that other portions of the material, documents, items, or
 12 communications for which protection is not warranted are not swept unjustifiably within
 13 the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 15 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 16 unnecessarily encumber or retard the case development process, or to impose unnecessary
 17 expenses and burdens on other parties), expose the Designating Party to sanctions.

18 If it comes to a Party's or a non-party's attention that information or items that it
 19 designated for protection do not qualify for protection at all, or do not qualify for the level of
 20 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
 21 withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided
 23 in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
 24 stipulated or ordered, material that qualifies for protection under this Order must be
 25 clearly so designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (apart from transcripts of
 28 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend

1 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top
 2 of each page that contains protected material. If only a portion or portions of the material on a
 3 page qualifies for protection, the Producing Party also must clearly identify the protected
 4 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
 5 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
 6 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

7 A Party or non-party that makes original documents or materials available
 8 for inspection need not designate them for protection until after the inspecting Party has indicated
 9 which material it would like copied and produced. During the inspection and before the
 10 designation, all of the material made available for inspection shall be deemed "HIGHLY
 11 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
 12 documents it wants copied and produced, the Producing Party must determine which documents,
 13 or portions thereof, qualify for protection under this Order, then, before producing the specified
 14 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
 15 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that
 16 contains Protected Material. If only a portion or portions of the material on a page qualifies for
 17 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 18 appropriate markings in the margins) and must specify, for each portion, the level of protection
 19 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 20 EYES ONLY").

21 (b) for testimony given in deposition or in other pretrial or trial
 22 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
 23 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
 24 and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL –
 25 ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of
 26 testimony that is entitled to protection, and when it appears that substantial portions of the
 27 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
 28 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to

1 have up to 20 days to identify the specific portions of the testimony as to which protection is
 2 sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY
 3 CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those portions of the testimony that
 4 are appropriately designated for protection within the 20 days shall be covered by the provisions
 5 of this Stipulated Protective Order.

6 Transcript pages containing Protected Material must be separately bound
 7 by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL"
 8 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or
 9 nonparty offering or sponsoring the witness or presenting the testimony.

10 (c) for information produced in some form other than documentary,
 11 and for any other tangible items, that the Producing Party affix in a prominent place on the
 12 exterior of the container or containers in which the information or item is stored the legend
 13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only
 14 portions of the information or item warrant protection, the Producing Party, to the extent
 15 practicable, shall identify the protected portions, specifying whether they qualify as
 16 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

17 5.3 Inadvertent Failures to Designate. If timely corrected, an
 18 inadvertent failure to designate qualified information or items as "Confidential" or
 19 "Highly Confidential – Attorneys' Eyes Only" does not, standing alone, waive the
 20 Designating Party's right to secure protection under this Order for such material. If
 21 material is appropriately designated as "Confidential" or "Highly Confidential –
 22 Attorneys' Eyes Only" after the material was initially produced, the Receiving Party, on
 23 timely notification of the designation, must make reasonable efforts to assure that the
 24 material is treated in accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
 27 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
 28 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a

1 Party does not waive its right to challenge a confidentiality designation by electing not to
 2 mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
 4 Designating Party's confidentiality designation must do so in good faith and must begin
 5 the process by conferring directly (in voice to voice dialogue; other forms of
 6 communication are not sufficient) with counsel for the Designating Party. In conferring,
 7 the challenging Party must explain the basis for its belief that the confidentiality
 8 designation was not proper and must give the Designating Party an opportunity to review
 9 the designated material, to reconsider the circumstances, and, if no change in designation
 10 is offered, to explain the basis for the chosen designation. A challenging Party may
 11 proceed to the next stage of the challenge process only if it has engaged in this meet and
 12 confer process first.

13 6.3 Judicial Intervention. A Party that elects to press a challenge to a
 14 confidentiality designation after considering the justification offered by the Designating
 15 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
 16 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in
 17 detail the basis for the challenge. Each such motion must be accompanied by a competent
 18 declaration that affirms that the movant has complied with the meet and confer
 19 requirements imposed in the preceding paragraph and that sets forth with specificity the
 20 justification for the confidentiality designation that was given by the Designating Party in
 21 the meet and confer dialogue.

22 The burden of persuasion in any such challenge proceeding shall be on the Designating
 23 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
 24 question the level of protection to which it is entitled under the Producing Party's designation.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material
 27 that is disclosed or produced by another Party or by a non-party in connection with this
 28 case only for prosecuting, defending, or attempting to settle this litigation. Such Protected

1 Material may be disclosed only to the categories of persons and under the conditions
 2 described in this Order. When the litigation has been terminated, a Receiving Party must
 3 comply with the provisions of section 11, below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a location and
 5 in a secure manner that ensures that access is limited to the persons authorized under this Order.

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 7 otherwise ordered by the court or permitted in writing by the Designating Party, a
 8 Receiving Party may disclose any information or item designated CONFIDENTIAL only
 9 to:

10 (a) the Receiving Party's Outside Counsel of record in this action, as
 11 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
 12 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
 13 attached hereto as Exhibit A;

14 (b) the officers, directors, and employees (including House Counsel) of
 15 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
 16 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

17 (c) experts (as defined in this Order) of the Receiving Party to whom
 18 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
 19 Bound by Protective Order" (Exhibit A);

20 (d) the Court and its personnel;

21 (e) court reporters, their staffs, and professional vendors to whom
 22 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
 23 Bound by Protective Order" (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom disclosure
 25 is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
 26 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
 27 Protected Material must be separately bound by the court reporter and may not be disclosed to
 28 anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS"

EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to “Experts”:

(a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" first must make a written request to the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her

1 primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's
2 current employer(s), (5) identifies each person or entity from whom the Expert has received
3 compensation for work in his or her areas of expertise or to whom the expert has provided
4 professional services at any time during the preceding five years, and (6) identifies (by name and
5 number of the case, filing date, and location of court) any litigation in connection with which the
6 Expert has provided any professional services during the preceding five years.

12 (c) A Party that receives a timely written objection must meet and
13 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
14 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
15 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
16 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must
17 describe the circumstances with specificity, set forth in detail the reasons for which the disclosure
18 to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
19 suggest any additional means that might be used to reduce that risk. In addition, any such motion
20 must be accompanied by a competent declaration in which the movant describes the parties'
21 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
22 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to
23 approve the disclosure.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 2 OTHER LITIGATION.

3 If a Receiving Party is served with a subpoena or an order issued in other litigation
 4 that would compel disclosure of any information or items designated in this action as
 5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
 6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
 7 and in no event more than three court days after receiving the subpoena or order. Such
 8 notification must include a copy of the subpoena or court order.

9 The Receiving Party also must immediately inform in writing the party who
 10 caused the subpoena or order to issue in the other litigation that some or all the material covered
 11 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
 12 must deliver a copy of this Stipulated Protective Order promptly to the party in the other action
 13 that caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the
 15 existence of this Protective Order and to afford the Designating Party in this case an opportunity
 16 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
 17 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
 18 of its confidential material – and nothing in these provisions should be construed as authorizing or
 19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 22 Material to any person or in any circumstance not authorized under this Stipulated Protective
 23 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 24 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
 25 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 26 this Order, and (d) request such person or persons to execute the “Acknowledgment and
 27 Agreement to Be Bound” that is attached hereto as Exhibit A.

1 10. FILING PROTECTED MATERIAL. Without written permission from the
 2 Designating Party or a court order secured after appropriate notice to all interested persons, a
 3 Party may not file in the public record in this action any Protected Material. A Party that seeks to
 4 file under seal any Protected Material must comply with Civil Local Rule 79-5.

5 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
 6 Producing Party, within sixty days after the final termination of this action, each Receiving Party
 7 must return all Protected Material to the Producing Party. As used in this subdivision, "all
 8 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of
 9 reproducing or capturing any of the Protected Material. With permission in writing from the
 10 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
 11 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
 12 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 13 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
 14 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has
 15 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
 16 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 17 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
 18 correspondence or attorney work product, even if such materials contain Protected Material. Any
 19 such archival copies that contain or constitute Protected Material remain subject to this Protective
 20 Order as set forth in Section 4 (DURATION), above.

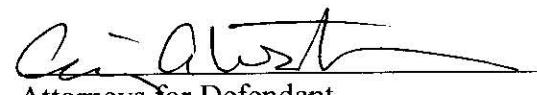
21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of
 23 any person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 25 Protective Order no Party waives any right it otherwise would have to object to disclosing
 26 or producing any information or item on any ground not addressed in this Stipulated
 27 Protective Order. Similarly, no Party waives any right to object on any ground to use in
 28 evidence of any of the material covered by this Protective Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

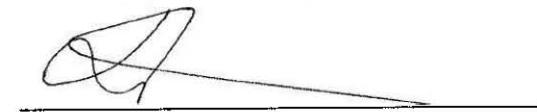
2 DATED: August 14, 2008



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Attorneys for Defendant

2 DATED: August 15, 2008



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Attorneys for Plaintiff

2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

3 DATED: August , 2008

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Hon. William J. H. Alsup
United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, [print or type full name], of [print or type
4 full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of *Williams v. Boston Scientific Corporation, et al.*,
7 Case No. 3:08-CV-01437-WHA, pending before the Honorable William H. Alsup (the
8 “Protective Order”). I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
11 any manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone number]
18 as my California agent for service of process in connection with this action or any proceedings
19 related to enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 | [printed name]

24 Signature: _____ [signature]

25 Dated: August 2008 MORGAN, LEWIS & BOCKIUS LLP

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By _____